IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPEAL NO. 618 OF 1994

1. Kiransi Ranjitsi Jadeja
   Aged 36 years.

2. Smt. Chandaba Ranjitsi Jadeja
   Aged 68 years.
   Both residing at Shiv Chaya
   Building, A Block 203,
   Second Floor, Navghar Road,
   Bhainder (East). ..Appellant
   (Org.Accd. Nos.1 2)

Vs.

The State of Maharashtra ..Respondent

Mr. M.K. Kocharekar with Mr. Shirish Gupte for appellants.
Mr. V.B. Konde-Deshmukh, APP for Respondent-State.

CORAM : S.S. PARKAR & S.R. SATHE, JJ.
Date : December 15, 2004.

ORAL JUDGMENT (PER S.S. PARKAR,J.):

1. This appeal is filed challenging the Judgment and Order dated 30/11/1994 delivered by the Additional Sessions Judge, Gr. Bombay convicting the appellants for offence under Section 302 read with Section 34 of IPC and sentencing each of them to RI for life and also convicting them for offence under Section 498-A read with Section 34 of IPC and sentencing each of them to RI for three years and to pay a fine of Rs.1000/- in default RI for six months in Sessions Case No.1235 of 1987.

2. Briefly narrated the facts leading to the appeal are as under:-

. The appellants, who are the son and mother, were prosecuted along with brother of appellant no.1 for offences under Sections 302 and 498-A read with Section 34 of IPC in connection with the death by burning of Pratibha @ Shanta, the wife of appellant no.1. The incident had taken place on 31/8/1987 in the matrimonial house of the deceased at about 7.30 p.m. that evening. The deceased Pratibha was the wife of appellant no.1 and the daughter-in-law of appellant no.2. She was married about 11 years before the date of the incident. She had two daughters and one son from her husband. Her daughter Kirti (PW 7) and son Ketan were staying with her in Bombay while another daughter Priti was at her native place living with the parents of the deceased in the State of Gujarat. In the morning on the date of the incident she was beaten by accused no.1 over cooking of food. She had spoken about her husband beating her on that day to her neighbour Smt. Hema Naidu (PW 2). She had also told her that she was likely to do something to her life because of the ill-treatment received at the hands of the appellants. Smt. Hema, however, tried

to console her. After some time the neighbours heard the shouts of Pratibha "Raju Bachav, Raju Bachav". Raju was the next door neighbour i.e. Rajendrakumar Naidu who was examined as PW 1 and is the son of Hema Naidu (PW 2). Hearing the shouts of Pratibha both Rajendra Naidu as well as Hema Naidu rushed to the house of Pratibha along with the duplicate key which they had with them. When they went at the door of Pratibha's house, accused no.3, the brother-in-law of the deceased, since acquitted, opened the door and told them that Pratibha was burning and went out. When these witnesses entered the house of the accused, they saw Pratibha was burning in the passage of the house and the windows were closed from inside. They extinguished the fire by pouring water on the person of Pratibha. Meantime Mr. Naidu, Hema's husband also came to the house of the accused and he asked his son to open the windows of the house. Other neighbours also collected there and Pratibha was taken in an autorickshaw to Holy Spirit Hospital. The authorities of that hospital did not admit Pratibha in their hospital as it was a burning case and offered hospital's Ambulance for taking Pratibha to Cooper Hospital. However, Pratibha was taken in the same autorickshaw to Cooper Hospital immediately by the neighbours and appellant no.1.

3. The constable at the Cooper Hospital gave intimation about the admission of Pratibha in burnt condition to MIDC Police Station about 8.30 p.m., pursuant to which PSI Telang along with Police Constable and SEM went there. After ascertaining from the doctor that Pratibha was conscious and in a fit condition to give statement, PSI Telang recorded her statement. Thereafter SEM also recorded her statement. They are Exhibits 18 and 19 respectively on record. In both these statements Pratibha had stated that her saree caught fire from the stove while cooking the food. PSI Telang then went to the place of offence in the night time and drew spot panchanama. Finding that there was no kerosene stove in the premises of the house, PSI Telang suspected the correctness of the statements of accidental burning given by Pratibha and, therefore, he recorded the statements of the neighbours who are residents of the same building. All the neighbours had stated about ill-treatment meted out to Pratibha by her husband and mother-in-law. One of the neighbours Hema Naidu (PW 2) had told the police that some time before the incident in question Pratibha had told her that her husband had beaten her in the morning on that day over cooking of food. According to PW 2 Hema, Pratibha had

told her that something might happen to her or she might end her life. But Hema consoled and asked her not to take any drastic step. This aroused suspicion in the mind of PSI Telang and he was convinced that it was not a case of accidental burning. PSI Telang, therefore, filed his own FIR Exh.21 and registered the crime for offence under Sections 498-A and 306 of the IPC.

4. Thereafter PI Gorad, who carried out further investigation in the case, recorded the statement of Kirti (PW 7), the daughter of the deceased, who was hardly six years old. In her statement she had stated that appellant no.2, the mother-in-law of the deceased had poured kerosene on the person of her mother and her father, appellant no.1, set her mother on fire. At that time she and her brother Ketan, who was younger than her, had just finished their dinner. After recording the statement of Kirti the offence was changed into Section 302 of IPC. Then further statements of the neighbours were recorded by PI Gorad. The dead body was sent for post mortem on 1/9/1987. On 1/9/1987 Pratibha's father had come from Gujarat pursuant to the telegram received by him on 31/8/1987. His statement was also recorded. After completion of the investigation, charge-sheet was

filed in the Magistrate's Court at Andheri, Mumbai and the case was committed to the Sessions Court on 17/2/1987.

5. Before the Sessions Court, charges were framed against the appellants along with accused no.3 for offences under Sections 302 and 498-A read with Section 34 of IPC, to which accused pleaded not guilty. On behalf of the prosecution 10 witnesses were examined. The main witness Kirti, daughter of the deceased, was examined as PW 7 who was an eye witness to the incident. PW 1 Rajendrakumar Naidu and his mother PW 2 Hema Naidu were the next door neighbours of the deceased. PW 4 Smt. Chandra Vora, PW 5 Rajkumar Dubey and PW 6 Suresh Vora were also the neighbours as they were also residing in the same building. PW 3 is Abhay Sharma, who acted as panch for spot panchanama. PW 8 is Chandubhai Mahida, the father of deceased Pratibha. PW 9 is PSI Maruti Telang, who had lodged his complaint Exh.21 and had recorded the statement of the deceased before she died. Lastly PW 10 is PI Dynando Gorad, who investigated the case. The defence of the accused was of denial. Their defence is that when Pratibha was cooking food on the kerosene stove, she fell on it and caught fire and was burnt and the kerosene from the

stove spread on the floor. As regards evidence of Kirti it is stated that since she was living with her grandfather, she had been tutored.

6. Considering the evidence on record, the trial court by its judgment and order dated 30/11/1994 acquitted accused no.3, the brother of appellant no.1 but convicted both these appellants, original accused nos.1 and 2 firstly for offence under Section 302 read with Section 34 of IPC and sentenced each of them to RI for life and secondly for offence under Section 498-A read with Section 34 of IPC and sentenced each of them to RI for three years and to pay a fine of Rs.1000/- in default RI for six months. The said order of conviction is under challenge in this appeal.

7. Mr. Kocharekar appearing for the appellant raised the same points which have been dealt with by the trial court. According to him the evidence of child witness should not be believed as the same is not corroborated by the other evidence on record and she was hardly six years' old at the relevant time and was residing with the parents of the deceased after the incident in question and therefore, she was under their influence.

8. No doubt immediately after the incident in question when Pratibha was taken to the Cooper Hospital her two statements were recorded, one by the police officer and another by SEM which are produced as Exhibits 18 and 19 respectively on record. In both those statements she has stated that while cooking food on stove her saree caught fire and that is how she got burnt and her husband and neighbours helped her by extinguishing fire. Thus, in her two statements she has given the impression that it was a case of accidental fire, her saree having been burnt while preparing food on a primus stove. After the statements of Pratibha were recorded PSI Telang went to the place of offence in the night and drew spot panchanama Exh.11. At that time PSI Telang noticed that there was no kerosene stove found at the place of incident. There was gas stove kept on the platform of the kitchen and cooking gas was used in the house for cooking food. In the kitchen room there was empty can of kerosene and kerosene was smelling all over the room in the kitchen and the passage. He, therefore, suspected and felt that it was not a case of accidental fire but Pratibha must have been burnt by pouring kerosene on her person and setting her on fire. He, therefore, recorded the statements of the neighbours from which it was clear to him that

Pratibha was being ill-treated by her husband and in-laws. This fortified his belief that Pratibha had not caught fire accidentally. He then went to the police station and lodged his FIR Exh.21 which was recorded by PI Gorad and the crime was registered for offence under Sections 306 and 498-A of IPC as Pratibha had succumbed to her injury at about 4 a.m. on 1/9/1987. Next morning statement of Kirti PW 7, six years old daughter of deceased Pratibha was recorded. In her statement Kirti had stated that accused no.2 had poured kerosene on the person of her mother and her father accused no.1 set her ablaze. The offence was, therefore, converted from Section 306 of IPC to offence under Section 302 of IPC. Further statements of the neighbours were recorded. The statement of the father was also recorded on 2/9/1987 in which he had stated about ill-treatment meted out to his daughter Pratibha. The earlier statements of the deceased undoubtedly appear to have been given under the influence and the fear of accused no.1, the husband of the deceased, who had accompanied her to the hospital. As discussed hereinafter the case of accidental fire is apparently inconsistent with the circumstances on record.

8. PW 8 Chandubhai Mahida, the father of the

deceased, has deposed that appellant no.1 had demanded a sum of Rs.20,000/- from him for business purpose but he had given him Rs.10,000/-. After the deceased asked her husband i.e. appellant no.1 to return the sum of Rs.10,000/- given to him by her father, he started harassing her. PW 8 has also stated that after the accused had shifted from Grant Road to Andheri residence, he used to beat and harass his daughter. He had received telegram on 31/8/1987 from accused no.1 that his daughter was serious and admitted to the hospital and, therefore, he went to Mumbai.

10. As regards the harassment there is evidence of neighbours also. PW 2 Hema Naidu, the mother of PW 1, has deposed that on the date of the incident at about 5.30 p.m. deceased Pratibha had called her to her house and told her that she was beaten by accused nos. 1 and 2 over cooking of food and, therefore, she would do something to her, but PW 2 had consoled her and asked her not to take any drastic step. PW 4 Smt. Chandra Vora, who was residing on the floor above the flat of the accused, has deposed that she used to go to the house of Pratibha. She saw accused no.2 abusing Pratibha. Similarly PW 6 Suresh Vora, who was residing on the third floor in the same building has

deposed that he had seen accused no.2 kicking Pratibha because the tea prepared by her had become cold. He had also heard abuses given to Pratibha and shouts of Pratibha on account of beating given to her. Thus from the evidence of the father of the deceased and the neighbours it is clear that Pratibha was ill-treated by her husband and her mother-in-law.

11. As regards the incident in question the main evidence is of Kirti PW 7, the daughter of the deceased. She was residing with her parents in the same house along with her uncle, grandmother and her younger brother Ketan. At the relevant time she was studying in the first standard. She has also stated about accused no.2 beating her mother daily. On the date of the incident there was quarrel about the cooking of food. Accused no.2 sent for her father from his shop. At about 7.30 p.m. when her father came from the shop her mother was busy cooking on the gas stove, while she and her brother Ketan were taking meals. Thereafter accused nos. 1 and 2 again quarrelled with her mother over the same issue. Her father called her mother to the bed room but her mother did not go there as she was busy in preparing food. Thereafter both the accused nos.1 and 2 went to the kitchen and accused no.2 took out kerosene can

which was kept below the kitchen platform and poured kerosene on the person of her mother, while her father set her on fire. At that time accused no.3 closed all the windows of the house. Her mother was shouting for help saying "Raju Bachav, Raju Bachav". The neighbours came there and extinguished the fire. PW 1 Rajendrakumar Naidu brought her and her brother Ketan in the hall from the kitchen. Her evidence is consistent and no omission or contradiction is pointed out on the main incident deposed to by her.

12. The evidence of PW 7 is, in some respect, supported by her neighbours. Firstly, PW 1 Rajendrakumar Naidu and his mother PW 2 Hema Naidu have both deposed that they heard shouts of Pratibha as "Raju Bachav, Raju Bachav" and, therefore, they rushed to the house of the accused. The door was opened by accused no.3 from inside. They saw Pratibha was burning and, therefore, they poured water on her person. No doubt, the witnesses have made some improvements by saying that Pratibha’s hands were tied and mouth was gagged and tied by handkerchief. But the fact remains that they had gone there pursuant to the shouts of Pratibha calling for help to save her, which is also stated by Kirti, daughter of accused no.1. The call given by Pratibha to her neighbour

Raju i.e. PW 1 to save her is very significant. If it had been a case of accidental fire or even an attempt to commit suicide, she would not have called the neighbour to save her life. Second circumstance which supports the evidence of child witness Kirti is that all the windows of the house were closed by accused no.3 and they were opened only by the neighbours. If it had been a case of accidental fire or even suicidal attempt on the part of Pratibha the windows would not have been closed by accused no.3. Whosoever might have closed the windows of the house but when the lady caught fire they were required to be opened. The circumstance that the windows of the house of the accused were closed at the time of the incident is also indicative of the homicidal burning of the deceased by the accused.

13. If we consider about the previous quarrels and ill-treatment meted out to the deceased Pratibha and the circumstance that the deceased had to call the neighbour for her help to save her life when there were three persons in the house, two of whom were male members, including her husband and the fact that the windows of the house were closed and had to be opened by the neighbours, there can be no doubt about the homicidal death of Pratibha. In our view, the

evidence of PW 7, who is none other than the daughter of the accused no.1 and an eye witness to the incident in question has been sufficiently corroborated by the aforesaid circumstances which are inconsistent with the case of accidental fire as well as attempt to commit suicide. It is not the case of the defence that the deceased had committed suicide. Under Section 313 statements the accused have stated that when Pratibha was cooking food on the stove she fell on it and was burnt. The absence of kerosene stove in the house belies the case of accidental fire. The presence of empty can of kerosene in the house and the smell of kerosene on the floor of the kitchen and the house is also inconsistent with the theory of accidental fire. Even as per the C.A. report Exh.25 the clothes of the deceased, which were sent to the office of the C.A. for examination, had smell of kerosene.

14. One more circumstance which negatives the case of accidental fire or even attempt to commit suicide is that though the presence of accused nos.1,2 and 3 in the house at the time of incident is not denied and their presence in the house is proved at the time of incident, none of them seems to have made any attempt

to save the deceased, as admittedly neither their hands nor their clothes had received any burns. If it had been a case of accidental fire or suicidal attempt on the part of the deceased, the accused would have rushed to help her to extinguish the fire and the deceased would not have received burns to the extent of 96%. This circumstance also corroborates and supports the evidence of the child witness PW 7 Kirti. Even PW 2 Hema Naidu had stated that she was told by Pratibha some time before the incident that she was beaten by the accused on that day in the morning and she apprehended that something wrong might happen to her life. If she had attempted suicide she would have done so in the course of the day before the return of accused no.1 at home in the evening. But accused no.2 had again quarrelled with the deceased in the evening and had sent for accused no.1. According to the evidence of PW 7 Kirti when accused no.1 came home, again there was quarrel and when her mother did not go to the bed room when called by accused no.1, both the accused nos.1 and 2 went to the kitchen, poured kerosene on her person and set her on fire. If the things had been otherwise, we do not expect the child to have given false version in her police statement when at the relevant time the parents of the deceased were not there to tutor her. At that time she must be

under the influence of both the accused. No doubt, her evidence was recorded in Court when she was 13 years' old but there is no improvement in her evidence as there was no omission or contradiction pointed out in her evidence as regards the main incident itself. The minor omissions or contradictions on insignificant points cannot affect her testimony with regard to the incident in question. May be she was under the influence of her grand-parents when she gave evidence. But if her statement had been falsely recorded earlier by the police she certainly would not have stuck to that version when she deposed in the court at the age of 13 years as she was mature enough to understand that she should not falsely implicate her own father.

15. Thus, there is evidence of harassment as deposed to by Kirti PW 7 and the neighbours as well as the father of the deceased PW 8 which attracts the offence under Section 498-A of IPC. As stated earlier the offence of murder against the appellants is also proved by the evidence of Kirti PW 7 as corroborated and supported by the evidence and the circumstances discussed above.

16. In the circumstances, we confirm the order of conviction and sentence recorded on 30/11/1994 by the Additional Sessions Judge, Gr. Bombay against both the appellants in respect of both the offences in Sessions Case No.1235 of 1987 and dismiss the appeal. The appellants shall surrender to their bail bonds forthwith.

(S.S. Parkar, J.)

(S.R. Sathe,J.)